

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 1

[Docket No. 99-087-1]

#### Licensing and Inspection Requirements for Dealers of Dogs Intended for Hunting, Breeding, or Security Purposes

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We propose to amend the Animal Welfare regulations to reflect our policy of regulating wholesale dealers of dogs intended for hunting, breeding, or security purposes. We currently regulate these dealers under the same regulations in place for wholesale dealers of other dogs. This action would make the regulations consistent with our policy and would, therefore, clarify licensing and inspection requirements for affected dealers of dogs intended for hunting, breeding, or security purposes.

**DATES:** We invite you to comment on this docket. We will consider all comments that we receive by February 2, 2001.

**ADDRESSES:** Please send four copies of your comment (an original and three copies) to: Docket No. 99-087-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 99-087-1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to

help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1234; (301) 734-7586.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) requires certain dealers to obtain a license from the Secretary of Agriculture in order to buy or sell animals. The AWA further authorizes the Secretary of Agriculture to promulgate standards and other requirements regarding the humane handling, care, treatment, and transportation of certain animals by these regulated dealers, as well as by research facilities, exhibitors, and carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Administrator of the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA). Regulations established under the AWA are contained in the Code of Federal Regulations (CFR) in title 9, parts 1, 2, and 3 (referred to below as the regulations). Part 1 contains definitions for terms used in parts 2 and 3. Part 2 contains general requirements for regulated parties. Part 3 contains specific requirements for the care and handling of certain animals. Subpart A of part 3 contains the requirements applicable to dogs and cats.

Section 4 of the AWA (7 U.S.C. 2134) requires that a dealer may not sell an animal to a research facility, or for use as a pet or for exhibition, until he or she first obtains a license from the Secretary. Section 4 also requires a dealer to have a license to buy from or sell to another dealer (i.e., at wholesale). Because dogs sold for hunting, breeding, or security purposes are not sold to research facilities, or for use as pets or for exhibition, dealers in these dogs do not need a license to buy or sell them unless they do so at wholesale.

Section 13 of the AWA (7 U.S.C. 2143) directs the Secretary to promulgate standards of care with which regulated dealers must comply. Because section 4 of the AWA requires the regulation only of wholesale dealers of hunting, breeding, and security dogs, retail dealers of such dogs are not subject to the standards promulgated under section 13 of the AWA.

In accordance with the AWA, on July 19, 1999, we published in the **Federal Register** (Docket No. 97-018-4, 64 FR 38546-38548) a decision and policy statement that notified the public that, among other things, it is now our policy to license and inspect wholesale dealers of dogs intended primarily for hunting, breeding, or security purposes. This means that we currently regulate these dealers under the same regulations in place for wholesale dealers of other dogs. We instituted this policy to help ensure the humane handling, care, and treatment of hunting, breeding, and security dogs.

However, the regulations at § 2.1 require that all dealers of dogs must be licensed and inspected. Our current definition for "dealer" in § 1.1 includes both wholesale and retail dealers of hunting, breeding, and security dogs. These provisions are inconsistent with our published policy.

Therefore, we propose to amend the regulations to require that only wholesale dealers of hunting, breeding, and security dogs be licensed and inspected. This change would be reflected in the definition for "dealer" in § 1.1. This action would bring our regulations into accord with our policy to regulate wholesale dealers of hunting, breeding, and security dogs.

The licensing requirements for animal dealers are contained in 9 CFR part 2, subpart A, and the care standards for dogs and cats are contained in 9 CFR part 3, subpart A. For information about becoming licensed as a dealer under the AWA, contact the person listed above under **FOR FURTHER INFORMATION CONTACT**.

#### Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the effects of this proposed rule on small entities. We do not currently have all the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining the number of small entities that would be affected by this proposed rule.

In accordance with the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements regarding the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers.

We propose to amend the Animal Welfare regulations to reflect our policy of regulating only wholesale dealers of dogs intended for hunting, breeding, or security purposes. As such, this action would not result in any changes to our operations. We currently help ensure the humane handling, care, and treatment of hunting, breeding, and security dogs through the licensing and inspection of wholesale dealers of these types of dogs; we regulate these dealers under the same regulations in place for wholesale dealers of other types of dogs.

To comply with our current policy and the regulations, wholesale dealers of dogs intended for hunting, breeding, or security purposes incur costs for licensing, as well as other expenses. The costs of licensing for affected dealers include an annual application fee of \$10 and an annual class "A" license fee based on 50 percent of total gross sales or compensation from leased animals. License fee amounts are determined according to ranges shown in Table 1 of 9 CFR part 2, § 2.6.

Among other costs incurred by wholesale dealers of hunting, breeding, and security dogs are expenses related to veterinary care, tagging or tattoo marking for animal identification, recordkeeping, health certification of dogs commercially transported, and maintenance of appropriate facilities and operating standards (see 9 CFR part 3, subpart A). It is reasonable to assume, however, that many of these responsibilities are met by affected dealers simply as a matter of good business practice. When dealers satisfy the facilities and operating standards of the regulations by, for example, providing a safe and healthy environment (including appropriate heating, cooling and ventilation of the

dogs' housing to adequate feeding and exercising programs), those dealers are contributing to their dogs' eventual sale value. As another example, records of transactions can only further a wholesale dealer's business success. Therefore, it is in a dealer's financial interest to promote the health and well-being of his or her dogs in accordance with the regulations. However, if any wholesale dealers of hunting, breeding, or security dogs were not in compliance with the regulations in 9 CFR parts 2 and 3 prior to our policy announcement in July, they may have expenses related to these requirements. We do not have information at this time on the number of such dealers or what their expenses might be.

The purpose of this proposed rule is actually to remove regulatory requirements covering dealers who sell hunting, breeding, or security dogs at the retail level. Those dealers would experience no economic effects from this action since we have never enforced those provisions.

The Regulatory Flexibility Act requires that agencies consider the economic effects of rules on small entities. The Small Business Administration determines the criteria by which entities are classified as "small," using Standard Industrial Classification (SIC) categories. Wholesale dealers of hunting, breeding, and security dogs are included within SIC category 0279, "Animal Specialties, Not Elsewhere Classified." Small entities in this category are defined as ones with annual receipts of \$0.5 million or less. Although data is not available on the number of wholesale dealers of hunting, breeding, and security dogs, or their incomes, it is presumed that the majority are small entities.

While a substantial number of affected dealers may be small entities, we expect that the effect of the proposed rule on these dealers would be insignificant because licensing and inspection requirements would remain the same. This action would simply make our regulations consistent with our policy and would, therefore, clarify licensing and inspection requirements for affected dealers of dogs intended for hunting, breeding, and security purposes.

The alternative to this proposed rule was to make no changes in the regulations. After consideration, we rejected this alternative since this action would make the regulations consistent with our policy to help ensure the humane handling, care, and treatment of hunting, breeding, and security dogs.

This proposed rule contains information collection and recordkeeping requirements. These requirements are described in this document under the heading "Paperwork Reduction Act."

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

#### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 99-087-1. Please send a copy of your comments to: (1) Docket No. 99-087-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would make our regulations consistent with our policy. Under our policy, affected wholesale dealers of dogs intended for hunting, breeding, or security purposes are required to apply for an initial license; apply annually for license renewal; keep and maintain records (for at least 1 year) regarding each animal, including those purchased, acquired, transported, sold, or otherwise disposed of; complete a written program of veterinary care for animals; and provide a health certificate for animals moving interstate or leaving the country.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for

the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average .34 hours per response.

*Respondents:* Certain wholesale dealers of dogs intended for hunting, breeding, or security purposes.

*Estimated annual number of respondents:* 5.

*Estimated annual number of responses per respondent:* 6.4.

*Estimated annual number of responses:* 32.

*Estimated total annual burden on respondents:* 11 hours.

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

#### List of Subjects in 9 CFR Part 1

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

Accordingly, we propose to amend 9 CFR part 1 as follows:

#### PART 1—DEFINITION OF TERMS

1. The authority citation for part 1 would be revised to read as follows:

**Authority:** 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

2. In § 1.1, the definition for “dealer” would be revised to read follows:

##### § 1.1 Definitions.

\* \* \* \* \*

*Dealer* means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog at the wholesale level for hunting, security, or breeding purposes. This term does not include: A

retail pet store, as defined in this section, unless such store sells any animals to a research facility, an exhibitor, or a dealer (wholesale); any retail outlet where dogs are sold for hunting, breeding, or security purposes; or any person who does not sell or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than \$500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats, during any calendar year.

\* \* \* \* \*

Done in Washington, DC, this 29th day of November 2000.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–30765 Filed 12–1–00; 8:45 am]

**BILLING CODE 3410–34–U**

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 261

[SW–FRL–6910–5]

#### Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule and request for comment.

**SUMMARY:** The EPA is proposing to use the Delisting Risk Assessment Software (DRAS) in the evaluation of a delisting petition. Based on waste specific information provided by the petitioner, EPA is proposing to use the DRAS to evaluate the impact of the petitioned waste on human health and the environment. Today's proposal provides background information on the mechanics of the DRAS, and the use of the DRAS in delisting decision-making.

The EPA is also proposing to grant a petition submitted by Eastman Chemical Company—Texas Operations, (Eastman) to exclude (or delist) certain solid wastes generated by its Longview, Texas, facility from the lists of hazardous wastes contained in 40 CFR 261.24 and 261.31 (hereinafter all sectional references are to 40 CFR unless otherwise indicated).

Eastman submitted the petition under sections 260.20 and 260.22(a). Section 260.20 allows any person to petition the Administrator to modify or revoke any provision of sections 260 through 266, 268 and 273. Section 260.22(a) specifically provides generators the opportunity to petition the

Administrator to exclude a waste on a “generator specific” basis from the hazardous waste lists.

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude that Eastman's petitioned waste is nonhazardous with respect to the original listing criteria and that the waste process Eastman uses will substantially reduce the likelihood of migration of hazardous constituents from this waste. We would also conclude that their process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

**DATES:** We will accept comments until January 18, 2001. We will stamp comments received after the close of the comment period as “late.” These “late” comments may not be considered in formulating a final decision.

Your requests for a hearing must reach EPA by December 19, 2000. The request must contain the information prescribed in section 260.20(d).

**ADDRESSES:** Please send three copies of your comments. Two copies should be sent to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A third copy should be sent to the Texas Natural Resources Conservation Commission (TNRCC), P.O. Box 13087, Austin, Texas, 78711–3087. Identify your comments at the top with this regulatory docket number: “F–00–TXDEL–TXEASTMAN.”

You should address requests for a hearing to the Director, Carl Edlund, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

**FOR FURTHER INFORMATION CONTACT:** Michelle Peace at (214) 665–7430.

#### SUPPLEMENTARY INFORMATION:

##### The Information in This Section is Organized as Follows

- I. What risk assessment methods has the Agency used in previous delisting determinations that are being revised in this proposal?
  - A. Introduction
  - B. What fate and transport model does the Agency use in the DRAS for evaluating